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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,971	12/19/2001	Joseph P. Russo	EMC-01-109	4871

7590

08/12/2004

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EXAMINER

PARDO, THUY N

ART UNIT

PAPER NUMBER

2175

DATE MAILED: 08/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/024,971

**Applicant(s)**

RUSSO ET AL.

**Examiner**

Thuy Pardo

**Art Unit**

2175

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. Applicant's Application filed on December 19, 2001 has been reviewed.
2. Claims 1-29 are presented for examination.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Otsuka et al. (Hereinafter "Otsuka") US Patent No. 6,697,823.

As to claim 1, Otsuka teaches the invention substantially as claimed, comprising steps of: presenting a user with a generic user interface for performing a dialogue [through the public media for performing a dialogue with a user, see the fig. 1]; and using information acquired in the dialogue for configuring for or performing a backup or restore operation [fig. 6, 9, 14A-14C, 16-19, col. 4, lines 17-60].

As to claim 2, Otsuka teaches the invention substantially as claimed. Otsuka further teaches using data structures created by function calls that are part of an application program interface [6 of fig. 1; col. 7, lines 47-51].

As to claim 3, Otsuka teaches the invention substantially as claimed. Otsuka further teaches that the data structures are shared by more than one application program interface [2-6 of fig. 1; col. 5, lines 22 to col. 6, lines 30].

As to claim 4, Otsuka teaches the invention substantially as claimed. Otsuka further an application program interface that is directed toward configuring a client application for the backup or restore operation [fig. 8].

As to claim 5, Otsuka teaches the invention substantially as claimed. Otsuka further teaches an application program interface that is directed toward interfacing with a client application for carrying out the backup or restore operation [fig. 8-14].

As to claim 6, Otsuka teaches the invention substantially as claimed. Otsuka further teaches an application program interface that is directed toward browsing a client application for objects to configure for or for carrying out the backup or restore operation [fig. 21-22].

As to claim 7, Otsuka teaches the invention substantially as claimed. Otsuka further teaches that the user interface is GUI [fig. 20a-20b].

As to claim 8, Otsuka teaches the invention substantially as claimed. Otsuka further teaches the user interface is a command line interface (CLI) [fig. 22].

As to claim 14, it is a corresponding apparatus claim of claim 1. Therefore, it is rejected under the same rationale.

As to claims 9-13 and 15-29, all limitations of these claims have been addressed in the analysis above, and these claims are rejected on that basis.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuy Pardo, whose telephone number is (703) 305-1091. The examiner can normally be reached Monday through Thursday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dov Popovici, can be reached at (703) 305-3830.

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The fax phone number for the organization where this application or proceeding is assigned are as follows: (703) 872-9306 (Official Communication)

and/or:

(703) 746-5616 (*Use this Fax#, only after approval by Examiner, for*

*"INFORMAL" or "Draft" communication. Examiner may request that a formal/amendment be faxed directly to then on occasions).*

Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

**5. Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 308-9051, (for formal communications intended for entry)

**Or:**

(703) 308-5359, (for informal or draft communications, please label

"PROPOSED" or "DRAFT")

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Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal  
Drive, Arlington. VA., Sixth Floor (Receptionist).

August 05, 2004

A handwritten signature in black ink, appearing to be 'THUY N. PARDO', with a stylized, looping flourish extending from the bottom right.

**THUY N. PARDO**  
**PRIMARY EXAMINER**